

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALPHONSO MCPHERSON,

Plaintiff,

VS.

CUYAHOGA COUNTY, *et al.*,

Defendants.

CASE NO.: 1:20-cv-00639

JUDGE:

NOTICE OF REMOVAL

Defendant Cuyahoga County seeks removal of this action pursuant to 28 U.S.C. § 1441 *et seq.*, and state as follows:

1. On March 8, 2020, Plaintiff Alphonso McPherson commenced a civil action against Cuyahoga County and other defendants (in their official and individual capacities) in the Cuyahoga County Court of Common Pleas, Case No. CV 20-930612. A copy of the Complaint is attached as Exhibit A.

2. Plaintiff alleges that the defendants violated various rights arising under the United State Constitution and federal statutory law. See, generally: Claim 1 (Eighth and Fourteenth Amendment, 42 U.S.C. § 1983); Claim 2 (same).

3. Each of the claims enumerated in the preceding paragraph arises under the Constitution, law or treaties of the United States within the meaning of 28 U.S.C. § 1331.

4. This Court possesses original jurisdiction over the federal claims in this civil action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This Court possesses supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367.

5. All served defendants¹ in this action consent to the removal of this action from the Cuyahoga County Court of Common Pleas to this Court.

6. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of Cuyahoga County's receipt of the Summons and Complaint.

7. In accordance with 28 U.S.C. § 1446(d), Cuyahoga County will give notice to the Cuyahoga County Court of Common Pleas of this Court's jurisdiction over the state court's case number CV-20-930612, promptly after filing this Notice of Removal. In accordance with 28 U.S.C. § 1446(d), Defendant will provide prompt written notice to Plaintiff of the filing of this Notice of Removal.

8. In accordance with 28 U.S.C. § 1446(a), the following documents from the state court are attached as exhibits to this Notice of Removal:

Exhibit A: Plaintiff's Complaint and attached Exhibits

Exhibit B: Summons issued to Clifford Pinkey

Exhibit C: Summons issued to Ken Mills

¹ See, *Durant v. Seneca County Jail*, No. 3:11 CV 1221, 2011 U.S. Dist. LEXIS 115731, *3, 2011 WL 4732865 (N.D. Ohio Oct. 6, 2011). The "John Doe" and "Jane Doe" defendants are not properly joined or served in this action and thus their consent is not required for removal. See, e.g., *Williams v. Walmart's, President*, No. 1:18cv518, 2018 U.S. Dist. LEXIS 222152, at *3 n.2 (S.D. Ohio Sept. 21, 2018) ("Although the John-Doe defendants did not join in the Notice of Removal, 'the general rule that all defendants must join in a notice of removal may be disregarded where, as here, the non-joining defendants are unknown.'" (quoting *Green v. America Online*, 318 F.3d 465, 470 (3d Cir. 2003)) (magistrate op.), *adopted at Williams v. Walmart's President*, No. 1:18-CV-00518, 2019 U.S. Dist. LEXIS 34996 (S.D. Ohio Mar. 5, 2019).

Exhibit D:	Summons issued to Eric Ivey
Exhibit E:	Summons issued to John Doe 1
Exhibit F:	Summons issued to John Doe 2
Exhibit G:	Summons issued to John Doe 3
Exhibit H:	Summons issued to William Wacsey
Exhibit I:	Summons issued to John Doe 4
Exhibit J:	Summons issued to Nicholas Evans
Exhibit K:	Summons issued to Cpl. Corso
Exhibit L:	Summons issued to Cpl. Moore
Exhibit M:	Summons issued to Sgt. Kelley
Exhibit N:	Summons issued to A. Brunell
Exhibit O:	Summons issued to Boster Robert
Exhibit P:	Summons issued to Delmare Beckham
Exhibit Q:	Summons issued to J. Haden III
Exhibit R:	Summons issued to Ralph Hannum
Exhibit S:	Summons issued to Brandon Smith
Exhibit T:	Summons issued to Jermaine Clemente
Exhibit U:	Summons issued to Nurse Grace Lagreca
Exhibit V:	Summons issued to Nurse Peggy Wheeler
Exhibit W:	Return of Service for MetroHealth
Exhibit X:	Return of Service for Dr. Tallman
Exhibit Y:	Summons issued to John Doe 5
Exhibit Z:	Summons issued to Timothy Brown

Exhibit AA: Return of Service for Cuyahoga County

Exhibit BB: Cuyahoga County docket entries as to all defendants as of March 24, 2020.

Cuyahoga County respectfully requests that this Notice effect the removal of the above-captioned case to this Court.

Respectfully submitted,

MICHAEL C. O'MALLEY, Prosecuting Attorney
of Cuyahoga County, Ohio

By: /s/ Janeane R. Cappara

Janeane R. Cappara (0072031)

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CERTIFICATE OF SERVICE

I certify that on March 26, 2020, a copy of the foregoing Notice of Removal was filed with the Court's electronic filing system, and that I caused the foregoing Notice of Removal to be served via email to the following:

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And Nurse Peggy Wheeler*

/s/ Janeane R. Cappara
Janeane R. Cappara (0072031)
One of the Attorneys for Cuyahoga County